IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9662 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT AGRICULTURAL UNIVERSITY - Petitioner(s)

Versus

JANAKGIRI BHAGVANGIRI - Respondent(s)

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Appearance :

MR SA DESAI for Petitioner No(s).: 1.

MR ANSHIN H DESAI for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 20/07/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the award dated 04.11.1999 passed by the Labour Court, Junagadh, in

Reference (LCJ) no.179 of 1992, whereby the said reference was allowed.

2.0 The brief facts of the case are that the respondent was appointed as a Junior Clerk on a two year probation period w.e.f. 15.12.1988. During the course of probation, since it was found that the services of the respondent were not satisfactory, the period of probation was initially extended for a period of one year up to 16.12.1991 and subsequently, extended up to 16.06.1992.

2.1 It is the case of the petitioner that since there was no improvement in the working of the respondent, by order dated 09.06.1992, his services were brought to an end from 11.06.1992.

2.2 Being aggrieved by the order of termination, the respondent approached the Labour Court by way of a reference. The Labour Court, by impugned award, allowed the said reference. Hence, this petition.

3.0 Mr.S A Desai learned advocate for the petitioner has contended that the respondent was appointed as a Probationer and was not confirmed in service, and

therefore, the Labour Court has committed an error in granting reinstatement, without considering the fact that a Probationer will not be governed by the provisions of the Industrial Disputes Act, 1947.

4.0 Mr. A H Desai learned advocate for the respondent has contended that the respondent cannot be said to be a Probationer since he had already completed the period of probation. He has, therefore, submitted that the contention raised by the petitioner that the respondent was a Probationer should not be accepted.

5.0 I have heard learned counsel for the parties and perused the documents placed on record. In view of the provisions of Section 25(F) of the Industrial Disputes Act, 1947, it clearly appears that the petitioner has not followed the mandatory provisions as provided under the I.D. Act. There is a clear violation of the provisions of Section 25(F) of the Industrial Disputes Act, 1947. Hence, the direction granting reinstatement in service is required to be confirmed.

5.1 However, so far as the direction qua awarding back wages is concerned, the Labour Court has not given any

cogent reasons as to on what basis it has awarded back wages to the respondent. Moreover, in view of the principle laid down by the Apex Court in the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C. pg.137, wherein it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order, the order awarding back wages is required to be quashed and set aside.

6.0 In above view of the matter, this petition is partly allowed.